IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

DANA SARGENT BERRY,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:11-CV-2817-L-BH
	§	
MICHAEL J. ASTRUE,	§	
COMMISSIONER OF SOCIAL	§	
SECURITY ADMINISTRATION,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION AND ORDER

Plaintiff Dana Sargent Berry ("Plaintiff") filed this appeal on October 20, 2011, from the adverse decision of the Commissioner of the Social Security Administration ("Commissioner") denying her claim for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI") under Titles II and XVI of the Social Security Act. Plaintiff requests that the Commissioner's denial of her claim be reversed and remanded for further administrative proceedings. The case was referred to Magistrate Judge Irma Carrillo Ramirez, who entered Findings, Conclusions and Recommendation of the United States Magistrate Judge ("Report") on January 25, 2013, recommending that Defendant's Motion for Summary Judgment (Doc. 13) be granted, Plaintiff's Motion for Summary Judgment (Doc. 12) be denied, and the decision of the Commissioner be affirmed. On February 8, 2013, Plaintiff filed objections to the Report.

I. Applicable Standard of Review

Judicial review of the Commissioner's denial of disability and SSI benefits is limited to whether the decision is supported by substantial evidence and whether the Commissioner followed

the correct relevant legal standards in reaching his findings. See 42 U.S.C. § 405(g); Carrier v. Sullivan, 944 F.2d 243, 245 (5th Cir. 1991). In determining whether the Commissioner's decision is supported by substantial evidence, the court scrutinizes the record to determine if such evidence is present. Johnson v. Bowen, 864 F.2d 340, 343 (5th Cir.1988). The court may not, however, reweigh the evidence in the record or substitute its judgment for that of the Commissioner's. *Id.*; Richardson v. Perales, 402 U.S. 389, 390 (1971) ("The findings of the [Commissioner] as to any fact, if supported by substantial evidence, shall be conclusive."). "Substantial evidence is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Kane v. Heckler, 731 F.2d 1216, 1219 (5th Cir. 1984); Carrier, 944 F.2d at 245. A finding of no substantial evidence is appropriate only when no credible evidentiary choices exist to support the decision. See Johnson v. Bowen, 864 F.2d 340, 343-44 (5th Cir. 1988). Under Federal Rule of Civil Procedure 72(b), applicable to dispositive motions, the district court reviews de novo "any part of the magistrate's disposition that has been properly objected to" and "may accept, reject, or modify the recommended decision; receive further evidence; or return the matter to the magistrate with instructions." Fed. R. Civ. P. 72(b)(3).

II. Plaintiff's Objections to the Magistrate's Report

Plaintiff asserts four objections to the magistrate judge's findings and recommendation, which are substantially similar arguments made in her summary judgment motion. Plaintiff contends that the Administrative Law Judge ("ALJ"): (1) erred in determining that October 28, 2009, is the onset date of her disability as opposed to an earlier onset date advocated by Plaintiff; (2) failed to give proper weight to the opinions of Dr. Peter Chang and licensed counselor Linda Curtis; (3) failed to properly evaluate Plaintiff's testimony and provide specific reasons for finding Plaintiff's

testimony not credible; and (4) relied upon flawed vocational expert testimony that did not include

all of Plaintiff's limitations.

After carefully considering Plaintiff's objections and conducting a de novo review of the

magistrate judge's thorough and well reasoned findings and recommendation, the court agrees with

the magistrate judge's determination that the ALJ applied the correct legal standards and that

substantial evidence supports the ALJ's decision. The court therefore overrules Plaintiff's

objections.

III. Conclusion

After an independent review of the pleadings, file, record, applicable law, and the magistrate

judge's findings and conclusions, the court determines that the magistrate judge's findings and

conclusions are correct, and accepts them as those of the court. Accordingly, the court grants

Defendant's Motion for Summary Judgment (Doc. 13), denies Plaintiff's Motion for Summary

Judgment (Doc. 12), affirms the decision of the Commissioner, and dismisses this case with

prejudice.

It is so ordered this 13th day of February, 2013.

Sam O. Lindsay

United States District Judge